

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JASON LAWRENCE
MCALLISTER, JR., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SAMANTHA ALTHER,

Respondent-Appellant,

and

DEVON EDWARD HOLLEY,

Respondent.

In the Matter of JASON LAWRENCE
MCALLISTER, JR., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DEVON EDWARD HOLLEY,

Respondent-Appellant.

UNPUBLISHED

July 15, 2003

No. 244984

Grand Traverse Circuit Court

Family Division

LC No. 01-000277-NA

No. 245299

Grand Traverse Circuit Court

Family Division

LC No. 01-000277-NA

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Respondent Samantha Alther appeals as of right and respondent Devon Edward Holley appeals by delayed leave granted from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (ii),¹ (g) and (j). In deciding to terminate respondents' parental rights, the trial judge stated: "Quite candidly this case is not that difficult with respect to respondent Holley. *It is incredibly difficult for me to decide with respect to respondent Alther.*" (Emphasis added.) Both respondents argue that the statutory grounds for termination were not established by clear and convincing evidence. We affirm the order insofar as it terminates respondent Holley's parental rights, but reverse the termination of respondent Alther's parental rights.

A statutory ground for termination under MCL 712A.19b(3) must be established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a petitioner establishes at least one ground for termination under subsection (3), the court must terminate the respondent's parental rights unless termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 364-365. This Court reviews decisions terminating parental rights for clear error. *Id.* at 356.

I. Respondent Alther

After our review, we hold that the trial court clearly erred in terminating respondent Alther's parental rights. The conditions that led to adjudication were Alther's unsuitable home and inadequate parenting skills. At the termination hearing, the evidence failed to establish that Alther's housekeeping skills remained a concern. In regard to suitable housing, there was considerable evidence about Alther's living situation. According to case manager Kristin Michalowski, respondent had been evicted from her home in July 2001 and went to live with her mother for two weeks. Thereafter, she resided with friends. In April 2001, Alther met Doug Weidner, and the two became a couple in late August 2001. They moved into a camper on his parents' property and subsequently, in mid-September, moved into his parents' home. While the two discussed marriage, they decided not to get married at this stage in their relationship. The Weidners and Alther lived in a three-bedroom, two-bathroom modular home. Mr. and Mrs. Weidner occupied the master bedroom, Alther and Doug Weidner shared the second bedroom, and the third bedroom was used for guests. Alther and Doug cooked for themselves and Alther assisted with housekeeping matters. According to Mary Weidner, Douglas' mother, respondent had a good work ethic and good hygiene. She helped out in the yard, occasionally did the dishes and laundry, and contributed financially when she was working. Mrs. Weidner stated that Alther, and Jason as well, were welcome in her home as long as Alther had a relationship with her son Doug. However, Mary Weidner believed this was not a permanent arrangement and hoped that her son and Alther would eventually find their own home.

In January 2002, Alther presented her caseworker with an application for section 8 subsidized housing and, in February, she started the process to determine her eligibility for such housing. On August 20, 2002, a two-bedroom section 8 trailer was obtained for Alther, and she was scheduled to move in on September 1. Alther's rent was paid by the Traverse City Housing Commission and another program paid her utility bills. During his summation on October 22,

¹ Section 19b(3)(c)(ii) is applicable only to respondent Holley.

2002, Alther's attorney represented to the trial court that Alther had in fact moved into the trailer and that it was suitable for the child.

Additionally, Alther successfully completed parenting classes and by all accounts was able to appropriately care for her child. Beth Stringer, the child's foster mother, observed Alther's interaction with the child during visitation. The visitation sessions went well and the child was happy to see Alther. Alther showed genuine affection toward her son and interacted with him appropriately. Ms. Stinger felt that the two had a loving relationship. Mrs. Weidner had also observed Alther with her son. She felt that the two loved each other very much. Alther was a loving mother. She disciplined Jason, played with him, and bathed him. Mrs. Weidner never observed Alther acting inappropriately with the child. Mrs. Weidner testified that respondent was a suitable, permanent parent to Jason. Doug Weidner also observed Alther with her son during visits and felt that Alther had a "pretty good basic mother and son relationship" and that the child knew Alther as his mother. The evidence presented at the termination hearing did not clearly and convincingly establish that termination was warranted under § 19b(3)(c)(i) and we conclude the trial court clearly erred in ruling otherwise.

In regard to § 19b(3)(g), while Alther initially failed to provide proper care and custody due to her dirty home and lack of parenting skills, as discussed above, the evidence did not clearly and convincingly establish that these issues were still problematic. Although Alther failed to maintain employment as required by her case service plan, in light of the evidence of the substantial progress she had made to comply with the plan, which included obtaining her GED, we conclude there was no clear and convincing evidence that she would not be able to provide proper care and custody within a reasonable time considering her child's age. Accordingly, the trial court clearly erred in terminating Alther's parental rights under § 19b(3)(g).

Finally, termination was also clearly erroneous under § 19b(3)(j). The evidence did not clearly and convincingly establish that the child was reasonably likely to be harmed if returned to Alther.

Because the evidence failed to establish a statutory ground for termination by clear and convincing evidence, the trial court clearly erred in terminating respondent Alther's parental rights.

II. Respondent Holley

We conclude that the trial court erred in terminating respondent Holley's parental rights under §§19b(3)(c)(i) and (c)(ii), but that termination was proper under §§19b(3)(g) and (j). Holley's lack of compliance with the court-ordered case service plan justified termination under these provisions. *In re Trejo, supra* at 363. In particular, the evidence demonstrated that Holley was "profoundly mentally ill," and had a pattern of ongoing irresponsibility in the areas of employment, housing, and financial management, and further, failed to empathize with his child. Additionally, although counseling was critical to address these problem areas, he failed to fully invest in counseling. Further, Holley did not have a stable source of income. In light of this evidence, termination was appropriate under §§19b(3)(g) and (j).

Finally, the evidence did not show that termination of Holley's parental rights was clearly not in the child's best interests. Thus, the trial court did not err in terminating his parental rights to the child.

Affirmed as to respondent Holley, reversed and remanded as to defendant Alther. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Richard Allen Griffin